

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEPHEN TAPP,

§

Plaintiff,

§

v.

CIVIL ACTION NO. H-11-2971

UNIVERSITY OF TEXAS HEALTH
SCIENCES CENTER AT HOUSTON—
SCHOOL OF DENTISTRY, *et al.*

§

Defendants.

§

ORDER

Stephen Tapp sued the University of Texas Health Sciences Center at Houston (“UTHealth”)—School of Dentistry, alleging that his discharge from the school was disability discrimination. (Docket Entry No. 1). UTHealth moved to dismiss. (Docket Entry No. 3). Tapp amended his complaint. *See* FED. R. CIV. P. 15(a)(1)(B). This amended complaint, (Docket Entry No. 5), added two new defendants, each in their individual capacity: Dr. John A. Valenza, D.D.S., Dean; and Sargent J. Taylor. UTHealth has moved to dismiss the claims against it in the amended complaint on the grounds of statute of limitations and sovereign immunity. (Docket Entry No. 6).¹ In response, Tapp moved for leave to amend his complaint a second time. (Docket Entry No. 7). UTHealth opposes this motion, primarily on the basis of futility. (Docket Entry No. 11). Tapp has not responded to UTHealth’s arguments in the motion to dismiss or in the opposition to the motion to amend.

¹ This motion moots UTHealth’s previous motion to dismiss. (Docket Entry No. 3).

Tapp has moved to continue the Rule 16 initial pretrial conference set for December 16, 2011, on the basis that his counsel will be traveling back to Houston that day from a previously scheduled legal workshop. (Docket Entry No. 12). UTHealth opposes the motion, arguing that Tapp's counsel's failures "to properly calendar a court deadline" and to move for a continuance in a timely manner do not amount to good cause. (Docket Entry No. 14).

Tapp's motion discloses no need for a continuance because the conflict he asserts can readily be accommodated. The workshop will be finished by the date of the hearing. Tapp's counsel may appear by telephone if he timely arranges for it in advance by contacting the court's case manager, or the court will reschedule the hearing for **5:00 p.m.** that day instead of 8:45 a.m., as currently set. Tapp's counsel must inform the case manager, Lisa Eddins, and opposing counsel no later than **December 12, 2011**, whether he prefers to appear by telephone or to have the conference rescheduled for the later time. At this conference, the court also will hear argument on UTHealth's motion to dismiss, (Docket Entry No. 6), and Tapp's motion for leave to file a second amended complaint, (Docket Entry No. 7). The motion for a continuance, (Docket Entry No. 12), is denied.

Finally, the docket does not reflect that Valenza and Taylor have been served in this case. UTHealth's counsel indicated in an e-mail that Valenza and Taylor had consented to her accepting service from them, (Docket Entry No. 11, Ex. A); however, it does not appear that service has occurred. The court orders Tapp to file proof of effective service no later than December 23, 2011.

SIGNED on December 9, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge